

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DAVID D. AUSTIN, II,

Plaintiff,

v.

JUDY P. SMITH, ET AL.,

Defendants.

ORDER

Case No. 15-cv-525-jdp

Plaintiff David D. Austin, II, has submitted a motion for an order to pay the remainder of his court filing fee from his release account. Under the Prison Litigation Reform Act, an inmate who files a lawsuit in federal court under the *in forma pauperis* statute must pay the \$350 filing fee, first by making an initial partial payment and then by sending the remainder of the fee to the court in installments of 20% of the preceding month's income, in accordance with 28 U.S.C. § 1915(b)(2). On September 4, 2015, this court entered an order assessing plaintiff an initial partial payment of the filing fee for this case, which plaintiff has paid. Plaintiff has been making monthly installment payments since then.

The language of 28 U.S.C. § 1915(b)(1) requires prison officials to use a prisoner's release account to satisfy an initial partial payment if no other funds are available. *Carter v. Bennett*, 399 F. Supp. 2d 936, 936-37 (W.D. Wis. 2005). However, with the exception of such initial partial payments, this court does not have the authority to tell state officials whether, and to what extent, a prisoner should be able to withdraw money from a release account. Because plaintiff cannot use release account funds to pay the remaining balance of the \$350 filing fee, I will deny this motion.

ORDER

IT IS ORDERED that plaintiff David D. Austin, II's motion for an order to pay the remainder of his court filing fee in this case from his release account is DENIED.

Entered this 15th day of October, 2015.

BY THE COURT:

/s/
PETER OPPENEER
Magistrate Judge